

- A** **Priyakumary Muthucumaru & Anor v
Gunasingam a/l Ramasingam (a bankrupt)**
- B** COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02-56 OF 2005
GOPAL SRI RAM, ZULKEFLI AND ABDULL HAMID EMBONG JJCA
14 SEPTEMBER 2006
- C** *Bankruptcy — Capacity of bankrupt — Undischarged bankrupt — Whether competent to maintain an action without written previous sanction of Official Assignee — Bankruptcy Act 1967 s 38(1)(a)*
- D** *Bankruptcy — Official Assignee — Sanction — Action by undischarged bankrupt — Whether written previous sanction of Official Assignee required — Bankruptcy Act 1967 s 38(1)(a)*
- E** *Civil Procedure — Locus standi — Action by undischarged bankrupt — No written previous sanction of Official Assignee obtained — Whether such action by bankrupt competent — Presence of Official Assignee's representative during hearing of action — Whether such presence signified Official Assignee's implied consent to action*
- F** *Civil Procedure — Probate — Contentious probate proceedings — Probate action, procedure for — Whether such probate action ought to be commenced by writ — Whether filing of a caveat after the grant of letters of administration proper — Whether proper to apply by way of summons in chambers to set aside order granting letters of administration — Rules of the High Court 1980 O 72*
- G** *Succession — Probate — Contentious suit — Proper procedure — Whether ought to be commenced by writ — Whether filing of caveat after grant of letters pointless — Rules of the High Court 1980 O 72*
- H** The appellants obtained letters of administration of the estate of the deceased under O 71 of the Rules of the High Court 1980 ('the RHC') on 1 August 2003. The first appellant — the third wife of the appellant — brought the probate proceedings as the widow of the deceased whereas the second appellant — the second and ex-wife of the deceased — brought the proceedings in her capacity as the mother and guardian of her son with the deceased. The respondent — the brother of the deceased — lodged a caveat in the High Court against the appellants' petition on 7 October 2003. He then applied by way of summon in chambers on 28 October 2003 to set aside the order of the High Court dated 1 August 2003 granting the said letters of administration to the appellants. At the time of his application, the respondent was
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an undischarged bankrupt and had filed his application without the previous sanction of the Official Assignee, contrary to s 38(1)(a) of the Bankruptcy Act 1967 ('the Act'). However, the High Court allowed the respondent's application and held, inter alia, that s 38(1) was not applicable to the facts. The High Court further held that the presence of an officer from the Official Assignee's office during the hearing of the respondent's application signified an implied consent on the part of the Official Assignee in allowing the respondent to pursue the action. The appellants thus appealed to the Court of Appeal. The appellants' main ground of appeal concerned the respondent's locus standi to pursue the action, given his 'undischarged bankrupt' status.

Held, allowing the appeal:

- (1) (per **Zulkefli** and **Abdull Hamid Embong JJCA**) Section 38(1)(a) of the Act clearly provides that a bankrupt is incompetent to maintain an action without the previous sanction of the Official Assignee. The sanction required under s 38(1)(a) of the Act is a written sanction from the Official Assignee. The respondent in the instant case had failed to make a formal application in writing to the Official Assignee for the issuance of the written sanction of the Official Assignee. The High Court judge had erred in law when he held that s 38(1)(a) of the Act did not apply to the facts of the case. The judge had also erred when he held that the presence of the officer from the Official Assignee's office in court in the proceedings, showed 'implied consent' for the respondent to maintain the action and to continue with the case (see paras 8–9).
- (2) (per **Zulkefli** and **Abdull Hamid Embong JJCA**) Further, the procedure adopted by the respondent in filing the action by way of summons in chambers to set aside the order of the court granting the letters of administration of the estate of the deceased to the appellants was totally incorrect. It amounted to an irregularity which could not be cured. The proceedings in respect of the respondent's application were thus a nullity (see para 10).
- (3) (per **Zulkefli** and **Abdull Hamid Embong JJCA**) In the instant case, the respondent's intended application was to revoke the grant of the letters of administration in respect of the estate of the deceased. It was thus a 'probate action' as defined by O 72 r 1(2) of the RHC. A probate action under O 72 r 2(1) of the RHC must be begun by writ and the writ must be issued out of the Registry. In the present case, the respondent had lodged a caveat in the High Court on 7 October 2003, well after the appellants had obtained the letters of administration of the estate of the deceased on 1 August 2003. The procedure adopted by the respondent in filing the caveat was wrong in law (see para 13).
- (4) (per **Zulkefli** and **Abdull Hamid Embong JJCA**) Since the object of a caveat is to prevent the issue of a grant of representation without notice to the person who has entered it, it is applicable only in a fresh application for the grant of representation. A caveat serves no purpose after the grant. In the instant case, the caveat served no purpose at all since the letters of administration had already been granted to the appellants on 1 August 2003 and the respondent's intended application was clearly to revoke the said grant (see para 15).

- A (5) (per **Gopal Sri Ram JCA**) The High Court, fell into error in construing the presence of the Official Assignee's representative as amounting to consent within s 38(1)(a) of the Act (see para 1).

[Bahasa Malaysia summary]

- B Perayu-perayu telah menerima surat-surat pentadbiran harta pusaka si mati di bawah A 71 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') pada 1 Ogos 2003. Perayu pertama — isteri ketiga perayu — telah memulakan prosiding probet sebagai balu si mati manakala perayu kedua — bekas isteri kedua si mati — telah memulakan prosiding dalam kapasitinya sebagai ibu dan penjaga kepada anak lelakinya dengan
- C si mati. Responden — abang kepada si mati — telah memasukkan kaveat di Mahkamah Tinggi terhadap petisyen perayu-perayu pada 7 Oktober 2003. Beliau kemudian telah memohon melalui saman dalam kamar pada 28 Oktober 2003 untuk mengetepikan perintah Mahkamah Tinggi bertarikh 1 Ogos 2003 membenarkan surat-surat pentadbiran kepada perayu-perayu. Pada masa
- D permohonannya, responden merupakan seorang bankrap yang belum dilepaskan dan telah memfailkan permohonannya tanpa sanksi terdahulu Pegawai Pemegang Harta, bertentangan dengan s 38(1) Akta Kebankrapan 1967 ('Akta tersebut'). Namun, Mahkamah Tinggi membenarkan permohonan responden dan memutuskan, antara lain, bahawa s 38(1) tidak terpakai terhadap fakta-fakta berikut. Mahkamah Tinggi
- E seterusnya telah memutuskan bahawa kehadiran seorang pegawai daripada pejabat Pegawai Pemegang Harta semasa perbicaraan permohonan responden menandakan persetujuan tersirat di pihak Pegawai Pemegang Harta membenarkan responden meneruskan tindakan itu. Perayu-perayu oleh itu telah merayu ke Mahkamah Rayuan. Alasan utama perayu-perayu adalah berhubung locus standi responden
- F untuk meneruskan tindakan itu, memandangkan beliau seorang 'bankrap yang belum dilepaskan'.

Diputuskan, membenarkan rayuan tersebut:

- G (1) (oleh **Zulkefli** dan **Abdull Hamid Embong HHMR**) Seksyen 38(1) Akta tersebut jelas memperuntukkan bahawa seorang bankrap tidak kompeten untuk membuat satu tindakan tanpa sanksi terdahulu Pegawai Pemegang Harta. Sanksi yang dikehendaki di bawah s 38(1) Akta tersebut merupakan satu sanksi bertulis daripada Pegawai Pemegang Harta. Responden dalam kes ini telah gagal membuat satu permohonan formal secara bertulis kepada
- H Pegawai Pemegang Harta untuk pengeluaran sanksi bertulis Pegawai Pemegang Harta. Hakim Mahkamah Tinggi telah terkhilaf dari segi undang-undang apabila memutuskan bahawa s 38(1) Akta tersebut tidak terpakai kepada fakta-fakta kes. Hakim juga terkhilaf apabila memutuskan bahawa kehadiran pegawai daripada pejabat Pegawai Pemegang Harta dalam prosiding mahkamah, menunjukkan 'persetujuan tersirat' untuk responden membuat tindakan itu dan meneruskan dengan kes tersebut (lihat perenggan 8–9).
- I (2) (oleh **Zulkefli** dan **Abdull Hamid Embong HHMR**) Bahkan, prosedur yang digunakan oleh responden dalam memfailkan tindakan melalui saman dalam kamar untuk mengetepikan perintah mahkamah membenarkan surat-surat

pentadbiran harta pusaka si mati kepada perayu-perayu adalah tidak betul. Ia membentuk satu luar aturan yang tidak boleh diperbetulkan. Prosiding berkaitan permohonan responden oleh itu adalah terbatal (lihat perenggan 10).

- (3) (oleh **Zulkefli** dan **Abdull Hamid Embong HHMR**) Dalam kes semasa, permohonan responden yang diniatkan itu adalah untuk membatalkan pemberian surat-surat pentadbiran berkaitan harta pusaka si mati. Oleh itu ia merupakan 'tindakan prober' seperti yang ditafsirkan oleh A 72 k 1(2) KMT. Satu tindakan prober di bawah A 72 k 2(1) KMT hendaklah bermula dengan writ dan writ itu hendaklah dikeluarkan oleh Pejabat Pendaftaran. Dalam kes semasa, responden telah memasukkan satu kaveat di Mahkamah Tinggi pada 7 Oktober 2003, selepas perayu-perayu menerima surat-surat pentadbiran harta pusaka si mati pada 1 Ogos 2003. Prosedur yang digunakan oleh responden dalam pemfailan kaveat adalah salah dari segi undang-undang (lihat perenggan 13).
- (4) (oleh **Zulkefli** dan **Abdull Hamid Embong HHMR**) Memandangkan tujuan kaveat adakah untuk menghalang isu kebenaran representasi tanpa notis kepada seseorang yang telah emmadukannya, ia adalah terpakai hanya dalam permohonan baru untuk membenarkan representasi. Suatu kaveat tiada tujuannya selepas pemberian itu. Dalam kes semasa, kaveat itu tiada tujuannya langsung kerana surat-surat pentadbiran telahpun diberikan kepada perayu-perayu pada 1 Ogos 2003 dan permohonan yang diniatkan oleh responden jelas membatalkan kebenaran itu (lihat perenggan 15).
- (5) (oleh **Gopal Sri Ram HMR**) Mahkamah Tinggi, terkhilaf dalam mentafsirkan kehadiran wakil Pegawai Pemegang Harta sebagai membentuk persetujuan dalam maksud s 38(1) Akta tersebut (lihat perenggan 1).]

Notes

For a case on contentious probate proceedings, probate generally, see 2(2) *Mallal's Digest* (4th Ed, 2004 Reissue) para 1907.

For cases on action by undischarged bankrupt, locus standi generally, see 2(2) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 795–794.

For cases on contentious suit, see 11 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2359–2366.

For cases on sanction, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2703–2705.

For cases on undischarged bankrupt, capacity of bankrupt generally, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2330–2354.

Cases referred to

M/s Laksamana Realty Sdn Bhd v Goh Eng Hua [2004] 3 MLJ 97 (refd)

Legislation referred to

Bankruptcy Act 1967 s 38(1)(a)
 Distribution Act 1957 s 6(e)
 Law Reform (Marriage and Divorce) Act 1976 s 31(1A)
 Registration of Birth and Death Act 1957 s 33(1)
 Rules of the High Court 1980 O 71

- A Appeal from:** Petition No S5–31–415 of 2003 (High Court, Kuala Lumpur)
Rasmani Kandiah (Mohd Latip & Associates) for the appellants.
Respondent in person.
Jamhirah Ali (Senior Federal Counsel) for the official assignee.

B Gopal Sri Ram JCA:

- C [1]** I have the advantage of reading the judgment of my learned brother Zulkefli JCA in draft and am entirely in agreement with it, in particular, the views he has expressed in s 38(1)(a) of the Bankruptcy Act 1967. The High Court, in my respectful view, fell into error in construing the presence of the Official Assignee's representative as amounting to consent within the aforesaid section. On that ground alone, this appeal must succeed.

D Zulkefli JCA:

INTRODUCTION

- E [2]** The respondent ('the caveator in the court below') applied by way of summons in chambers dated 28 October 2003 ('the application') to set aside an order of the High Court dated 1 August 2003 granting the letters of administration of the estate of the deceased to the appellants ('the petitioners in the court below'). The respondent's application was allowed with costs. Against this order, the appellants filed the appeal herein.

F FACTS OF THE CASE

- [3]** The relevant facts of the case are as follows:
- G (1)** The deceased was one Letsumanasingam s/o Ramasingam. The respondent is his brother. The first appellant, Priyakumary Muthucumaru is the third and current wife of the deceased. The second appellant is the second wife of the deceased and claiming against the estate of the deceased in her capacity as the mother and guardian of her son with the deceased, one Pradeeban.
- H (2)** The deceased passed away on 17 February 2003. The appellants then filed for Letters of Administration of the estate of the deceased under O 71 of the Rules of the High Court 1980 ('RHC') on 22 May 2003. The High Court granted the order for letters of administration of the estate of the deceased to the petitioners on 1 August 2003.
- I (3)** The respondent had lodged a caveat in the High Court on 7 October 2003 against the petition filed by the appellants and thereafter a warning was issued.

He subsequently made the application on 28 October 2003. The respondent entered appearance on 30 October 2003.

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THE APPELLANTS' CONTENTION

[4] In the court below in opposing the respondent's application, it was contended on behalf of the appellants, *inter alia*, as follows:

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- (1) The beneficiaries of the estate of the deceased pursuant to s 6(e) of the Distribution Act 1957 are only the first appellant, the widow of the deceased and his son Pradeeban who is a minor and represented by the second appellant.
- (2) The respondent's allegation that the first appellant is not a legal spouse of the deceased, being a Sri Lankan is baseless. This is because the marriage of the deceased and the first appellant which took place in Sri Lanka was registered in Malaysia on 6 January 1993 pursuant to s 31(1A) of the Law Reform (Marriage and Divorce) Act 1976.
- (3) There is no obligation on part of the appellants to disclose the respondent's interest in the deceased's estate in their application for Letters of Administration (if any) because he is not a beneficiary thereunder.
- (4) Pradeeban is the son of the deceased. The respondent himself acknowledged this fact in his invitation to the son to perform religious rites to the deceased and also when he wrote to Amanah Raya Berhad informing that the deceased left behind a son from the marriage with the second appellant.
- (5) The respondent is an undischarged bankrupt. Therefore he has no locus to maintain this action without sanction from the Official Assignee.

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THE RESPONDENT'S CONTENTION

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[5] The respondent in support of the application in the court below contended, *inter alia*, as follows:

- (1) In the decree nisi absolute of the divorce between the deceased and the second appellant, the second appellant undertook to meet the child's financial needs and make no claims at any stage from the deceased. She also obtained a final and absolute separation court order that she shall have the guardianship, custody and care of the child with no access between the child and the deceased. This means that the child cannot make any claim against the deceased's estate.
- (2) The child, Pradeeban is not a natural son of the deceased. This is because the deceased cannot have children. The respondent's request that the child should take a DNA test to prove that he is the natural child of the deceased was rejected by the appellants.
- (3) The first appellant is permanently separated from the deceased. The deceased had in fact lodged a police report against the first appellant for criminal offences. The first appellant had never visited the deceased when he was in the hospital and when he passed away. The respondent also lodged a police report

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- A** against the first appellant alleging her conspiring with her friends to kill the deceased.

FINDINGS OF THE HIGH COURT

- B** [6] The learned judge of the High Court in his grounds of judgment in allowing the respondent's application amongst others had made the following findings:
- C** (1) An entry in the Certificate of Birth pursuant to s 33(1) of the Registration of Birth and Death Act 1957 which shows the deceased is the father of Pradeeban does not conclusively prove that Pradeeban is indeed the son of the deceased. This can only be proved by calling all the witnesses in a full trial.
- D** (2) The appellants had never visited the deceased at the hospital when he was sick nor they attended his burial. They were not aware of the financial status of the deceased but only wanted leave from the court to get their hands on the deceased's wealth.
- E** (3) Before the filing of the petition herein under O 71 of the RHC, the appellants were fully aware that the respondent himself was also keen to file the same application. Therefore the appellants knew beforehand that their petition will be challenged. Thus, they should have filed a probate action under O 72 of the RHC instead of filing a summary application under O 71 of the RHC.
- F** (4) The respondent has a locus to maintain the action. Section 38(1)(a) of the Bankruptcy Act 1967 ('the Act') is not applicable here. Further, the presence of an officer from the office of the Official Assignee during the hearing signifies an implied consent on the part of Official Assignee in allowing the respondent to pursue the action herein.
- G** (5) The court is satisfied that the respondent had managed to raise triable issue in respect of facts and law. The petition should not be heard and disposed off summarily. On the above grounds, the respondent's application is allowed with costs. Pursuant to O 72 of the RHC the court grants leave to the petitioners to file a probate action by writ against the respondent.

DECISION OF THE COURT ON APPEAL

- H** [7] It is noted at the outset the appellants' main ground of appeal is whether the respondent has the locus standi to pursue the action on the basis that the respondent is an undischarged bankrupt. This same ground was advanced by the appellants in opposing the respondent's application before the High Court but the learned High Court judge dismissed it and ruled that the respondent had the locus to maintain the action. The learned judge went on to state that s 38(1) of the Act is not applicable here and that the presence of an officer from the office of the Official Assignee during the hearing of the respondent's application signifies an implied consent on the part of the Official Assignee in allowing the respondent to pursue the action.
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[8] Puan Jamhirah Ali, learned Senior Federal Counsel who appeared for the Official Assignee (now known as Director General of Insolvency by way of A1197/03) at the hearing of this appeal had confirmed the fact that before the filing

of the application, the respondent who is a bankrupt had never applied for a sanction or consent from the Official Assignee. Section 38(1)(a) of the Act reads as follows:

38(1) Where a bankrupt has not obtained his discharge —

- (a) *the bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction of the Official Assignee.*

[9] We are of the view the sanction that is required under s 38(1)(a) of the Act is a written sanction from the Official Assignee. There must be first shown by the respondent in this case a formal application in writing made by him as a bankrupt to the Official Assignee for the issuance of the written sanction of the Official Assignee. The respondent has failed to do so here. The provision of s 38(1)(a) of the Act reproduced above is clear in that a bankrupt shall be incompetent to maintain an action without the previous sanction of the Official Assignee. The exception is only as regards an action for damages in respect of an injury to his person which is not the case here (see the case of *M/s Laksamana Realty Sdn Bhd v Goh Eng Hua* [2004] 3 MLJ 97). It is therefore our judgment that the learned judge of the High Court had erred in law when he took view that s 38(1)(a) of the Act does not apply to the facts of the case. We are also of the view that the learned judge had erred when he held that the presence of the officer from the office of the Official Assignee in court in the proceedings before him on 7 July 2004 showed 'implied consent' for the respondent to maintain the action and to continue with the case. On this ground alone, the appellants would succeed and we would allow this appeal.

[10] There is one other important point which we would like to deal with here. Even assuming the learned judge of the High Court is right in treating that the respondent as a bankrupt is competent to maintain the action against the appellants, we are of the considered view that the procedure adopted by the respondent in filing the action by way of summons in chambers to set aside the order of the court granting the letters of administration of the estate of the deceased to the appellants is totally incorrect. It amounts to an irregularity which cannot be cured and thus the said proceedings in respect of the respondent's application was a nullity.

[11] The relevant rules relating to probate proceedings are found in the RHC, particularly O 71 and O 72. Order 71 of the RHC provides for procedures relating to non-contentious probate proceeding, while O 72 of the RHC provides for procedures relating to contentious probate proceeding. For the purpose of the RHC, 'probate proceedings' include a proceedings in probate (where will is involved) as well as proceedings for letters of administration (where no will is involved). Order 1 r 4(1) of the RHC provides 'probate action' has the meaning assigned to it by O 72. Order 72 r 1(2) provides:

(2) In these rules 'probate action' means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious.

A [12] In the present case the matters raised by the respondent in our view relate to contentious probate proceedings. Therefore the provision of O 72 of the RHC shall apply to the respondent's case. Both O 71 and O 72 of the RHC provide for the mode of issuance of citations, which is a preliminary step to be taken by the parties concerned in the probate proceedings. For citations in non-contentious probate matters under O 71 of the RHC the citor must enter a caveat before the issue of the citations. Order 71 r 41(3) of the RHC clearly provides for this requirement. Thus in that circumstances, a citation cannot be issued unless and until the citor has entered a caveat. However, it must be stressed that this requirement under O 71 r 41(3) of the RHC is only for non-contentious probate proceedings under O 71. The provision relating to caveat is to be found under O 71 r 37 of the RHC. C Order 71 r 37(1) and (3) provides that *'any person who wishes to ensure that no grant is made without notice to himself may enter a caveat'* by filing the Caveat Form 173 in the Registry. It is a notice in writing (Form 173) lodged at the Registry of the High Court. The object of a caveat is to prevent the issue of grant of representation without notice to the person by whom or on whose behalf the caveat is entered. D

[13] For the present case, it must be noted that it involves the respondent's intended application to revoke the grant of the letter of administration in respect of the estate of the deceased which was granted to the appellants on 1 August 2003. By virtue of the definition of the words 'probate action' under O 72 r 1(2) of the RHC that proceeding is a probate action. It is a contentious probate proceeding as defined thereunder. Therefore, for the purpose of the action contemplated by the respondent against the appellants in this case the applicable rules are O 72, not O 71 of the RHC. A probate action under O 72 r 2(1) of the RHC must be begun by writ and the writ must be issued out of the Registry. In the present case, the respondent is found to have lodged a caveat in the High Court on 7 October 2003, well after the appellants had obtained the letters of administration of the estate of the deceased on 1 August 2003. In our view, the procedure adopted by the respondent in this case by filing the caveat to challenge the granting of the letters of administration of the estate of the deceased to the appellants is wrong in law. E F

G [14] The relevant provisions relating to contentious probate proceedings are found in O 72 rr 7 and 8 of the RHC. For easy reference, the provisions of O 72 rr 7 and 8 of the RHC are reproduced in full as follows:

7 Citation to bring in grant (O 72 r 7)

H *In an action for the revocation of the grant of probate of the will, or letters of administration of the estate of a deceased person, a citation against the person to whom the probate or letters of administration, as the case may be, was or were granted requiring him to bring into and leave at the Registry the probate or letters of administration, as the case may be, may be issued on the application of the plaintiff.*

I 8 Citations (O 72 r 8)

- (1) *A citation under rule 5 or 7 must be issued out of the Registry and must be settled by the Court before it is issued.*
- (2) *Before such a citation is issued an affidavit verifying the statements of fact to be made in the citation must be sworn by the person applying for it to be issued:*

Provided that the Court may in special circumstances allow the affidavit to be sworn by that person's solicitor.

- (3) *Issue of a citation takes place upon its being sealed by an officer of the Registry.*
- (4) *Without prejudice to Order 62 rule 5, a citation under rule 5 or 7 must be served personally on the person cited.*
- (5) *Service out of the jurisdiction of a citation under rule 5 or 7 is permissible but, in the case of a citation under rule 7, only with the leave of the Court.*
- (6) *Order 11 rule 4, shall apply in relation to an application for the grant of leave under paragraph (5) as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.*
- (7) *An order granting leave to serve a citation under rule 7 out of the jurisdiction must limit a time within which the person to be served with the citation must comply with it.*
- (8) *Order 11 rules 5, 6 and 8 shall apply in relation to a citation under rule 7 as they apply in relation to notice of a writ.*

[15] Unlike O 71 of the RHC, there is nothing under O 72 of the RHC which mention about caveat and the requirement that a caveat must first be entered before a citation can be issued. Therefore, we are of the view that for a citation under O 72, particularly r 7 thereof, the prior entry of a caveat as applicable under O 71 of the RHC for non-contentious probate proceedings is not required. It is not a pre-condition to the issue of a citation under O 72 r 7 of the RHC. It is only logical that since the object of a caveat is to prevent the issue of a grant of representation without notice to the person who has entered it, it is applicable only in fresh application for the grant of the representation, but not after the grant. The caveat served no purpose at all in the present case where a letter of administration has already been granted to the appellants on 1 August 2003 and the respondent's intended application is clearly to revoke the said grant. On this point in *MLJ Handbook Series, Administration of Estates Handbook* — Advisory Editor Kanesh Sundrum (at p 1[202]), it is stated that:

Once representation has been granted to any petitioner and extracted, a caveat cannot be entered to stop any proceeding relating to the estate. In such a situation, the proceedings can only be stopped by revoking the grant of representation.

CONCLUSION

[16] For the above stated reasons, we would allow the appellants' appeal. The order of the High Court dated 8 December 2004 in allowing the respondent's application is hereby set aside. In view of the fact that the respondent is an undischarged bankrupt, we make no order as to costs in respect of the proceedings in this appeal. The deposit paid by the appellants for this appeal is to be refunded to the appellants.

[17] My learned brother, Abdull Hamid Embong JCA has seen this judgment in draft and has expressed his agreement with it.

Appeal allowed.

Reported by John Paul Simon